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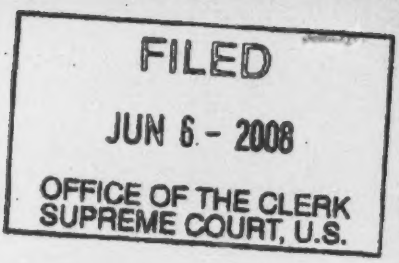

(3)

No. 07-1171

In The
Supreme Court of the United States

MARGUERITE SAMMANN, Individually, and as Executrix of the Estate of DR. HOWARD DAVID SAMMANN, M.D. et al.,

Petitioners,

v.

FRANCIS N. MAYER, Individually, and LOUISE MAYER, Individually, and as a Marital Community, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

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PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners Marguerite and Nadene M. Sammann, appellants, No. 07-1171, respectfully move the Court for an order 1) vacating denial of the petition for writ of certiorari, entered on May 12, 2008, and 2) granting the petition.

The Ninth Circuit affirmed a single Federal Judge's sua sponte dismissal of petitioners' substantial monetary claims for federal Oil and Gas Leases and other properties, based on grounds of res judicata, collateral estoppel and statute of limitations from a prior state case.

Petitioners state the following reasons for rehearing:

1. **Exceptional Circumstances-Grave Miscarriage of Justice-Unfair Proceedings in the prior state case.**

2. **Death by Gunshot of Attorney who, Unbeknownst** to petitioners, had represented almost all the parties on both sides of the state case. This had a chilling effect on our ability to secure adequate legal counsel.

3. **As a result of the misconduct and unclean hands of the defendant and his attorneys, Petitioners had No Legal Representation in the state trial and state appellate courts.**

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A. Factual Background-Prior State Case

Marguerite and Nadene M. Sammann filed a lawsuit in 1994 in a Washington State Court for wrongful conversion against a sole defendant, Francis N. Mayer, as personal representative of the estate of Elizabeth Sammann. There were no witnesses who testified in the state case. No one was deposed, there was little or no discovery. There were no mandatory status conferences nor were there any case schedules handed out to parties. There was no jury trial or any trial.

1. Exceptional Circumstances-Unfair Proceedings in the prior state case.

Citizens are entitled to a full and fair Opportunity to litigate a cause of action. This was denied to petitioners. Defendant in his separate capacity as a personal representative, hired the long-standing attorney of the petitioners, Judson Hines, Jr.

2. Defendant Mayer Hires Same Attorney Who Represented Petitioners

Petitioners' long-standing attorneys were Judson Hines, Jr. and Stanley Riddle, Riddle and Hines. Unbeknownst to petitioners. Francis N. Mayer hired the same attorney, Judson Hines to represent Mayer.

3. Petitioners' Former Attorney Hines Found Shot to Death

Five months before the state lawsuit was filed, Judson Hines, attorney who had represented petitioners, was found shot to death. These facts were kept from us and we discovered it by accident.

4. Petitioners were Denied Adequate Discovery in the prior state case. There were no depositions, no witnesses called, the sole defendant in the state case obstructed discovery.

5. Defendants Concealed important information and Federal Claims in the prior state case.

6. There was No Identity of Parties Between The Federal Case and the prior state case. Without Identity of the Parties or Their Privies, Claim Preclusion is barred.

After we appealed the trial court decision, we discovered the existence of:

1) the false death certificate that was created and filed in the State of Minnesota

2) the federal oil and gas leases.

Both of the above claims were never in the state trial action because they were deliberately concealed from us by the defendants who did not appear in the state case: Francis N. Mayer and Louise Mayer. Both are citizens of Minnesota.

In *Marshall v. Holmes*, 141 U.S. 589, 12 S.Ct. 62, , where a woman sought to enjoin the enforcement of judgments obtained by fraud and forgery, this Court stated, opinion written by Justice Harlan,

"This Court, may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly against him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would simply take from him the benefit of judgments obtained by fraud".

We pleaded the discovery rule in the federal court and asked for Judicial Notice of the death of the attorney Hines and the false death certificate that was filed in the State of Minnesota.(See COA 9th Cir. Docket for November 3, 2006,.)

The District Court chose to ignore our assertion of the discovery rule in pleading estoppel.

And when the Ninth Circuit denied our motion for judicial notice, it chose to ignore the two most egregious facts in this case.

In at least five Circuits, (2d, 5th, 7th, 9th, 11th) the rule is well known that "a party against whom claim preclusion is asserted must have had full and fair opportunity to litigate claim in prior proceeding"

When a state court judgment is asserted as basis for preclusion in federal court, state proceedings must satisfy minimum procedural due process

We wonder if perhaps this might be a good time to develop a model of procedural fairness?

The sole defendant in the prior state case was Francis N. Mayer, appearing in his capacity as personal representative of the estate of Elizabeth Sammann.

6. There was No Identity of Parties Between the Federal Case and the prior state case. Without Identity of the Parties or Their Privies, Claim Preclusion is Barred.

In the prior state case, Louise Mayer, individually and as a marital community was never served with process, was never a named party, never appeared in the action, was never deposed.

Francis N. Mayer as an individual and as a marital community was never a named party to the prior state action, never appeared as a witness, was never deposed.

Husband and wife do not have privity for purposes of asserting res judicata or claim preclusion. [A] relationship between husband and wife or parent and child normally does not give rise to privity for purposes of claim preclusion. (Moore's Federal Practice, (2008 edition) Volume 18.

"Person who is not party to litigation is not bound by judgment in that litigation", *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S.Ct. 115, 85 L.Ed.22 (1940)

In Blonder-Tongue v. University of Illinois Foundation, , 402 U.S. 313, 91 S.Ct. 1434, this Court held, in an opinion written by Justice White, that" the patentee-plaintiff must be permitted to demonstrate, if he can, that he did not have 'a fair opportunity procedurally, substantively and evidentially to pursue his claim the first time.' (quoting Eisel v. Columbia Packing Co., 181 F. Supp. 298, 301(Mass. 1960)

And

among other appropriate inquiries would be whether without fault of his own, a patentee was deprived of crucial evidence or witnesses in the first litigation."

When we discovered the additional claims in this matter, the trial court had already dismissed the state proceeding and it was under appeal in the Washington State Court of Appeals.

We had filed a timely appeal to the proper state courts. After our appeal was denied, we asked for discretionary review from the State Supreme Court. That court denied our request.

The defendant Mayer asked that a judgment be rendered against us, for bringing the appeal, and the court awarded him almost $5,000 in a judgment. The court also stated that in order to file anything with the appeals court, including any newly discovered evidence, that the judgment would have to be paid to Mayer.

During the state appeal period, we discovered additional claims that had we known existed, would have been decisive in our prevailing in the state lawsuit. As soon as we discovered them, we brought them to the attention of the state appeals court. Our timely motion to recall the mandate was denied.

The sole defendant in the state action and his attorneys had large conflicts of interest that they refused to disclose to us.

After the death of attorney Hines, Mayer replaced him with an attorney who was an officer of the King County Superior Court. When we sought discovery from the personal representative of Hines' estate, attorney Shaw came into the Hines' hearings and obstructed all discovery there. Shaw also demanded attorney fees be awarded to him, which the Court denied.

CONCLUSION

This Petition for Rehearing should be granted, and the case should be set down on the regular calendar.

Respectfully submitted,

May 31, 2008

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CERTIFICATE OF PETITIONERS

As petitioners, we hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

/s/ _____
Marguerite Sammann
Petitioner Pro-Se

/s/ _____
Nadene M. Sammann
Petitioner Pro-Se